UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

*Ex parte* ROBERT MAY, MICHAEL SHLASKO, and JOEL KAHN

_____

Appeal 2008-3970
Application 10/743,655
Technology Center 3600

_____

Decided: November 26, 2008

_____

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R.
MOHANTY, *Administrative Patent Judges.*

FISCHETTI, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's
final rejection of claims 1-34. We have jurisdiction under 35 U.S.C. § 6(b)
(2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and a method for obtaining data from an identification card, and more particularly to verifying an individual's age utilizing a scanner which generates a string of data which is representative of the age of the identification card holder. (Specification 1:5, 6, and 8:26.)

Claims 1 and 18, reproduced below, are representative of the subject matter on appeal.

> 1.     A system that facilitates age verification of an individual, comprising:
>        a machine data reader that gathers age-related data information based at least in part upon encoded data existing on an identification card read by the machine data reader, the machine data reader containing a verification component that decodes the encoded data, extracts the age-related data information, and generates a data string compatible with a point-of-sale system based at least in part on the age-related data; and
>        a component that relays the age-related data string to the point-of-sale system, the point-of-sale system indexes the data string to a resident lookup table.

> 18.    A method for verifying an age of an individual, comprising:
>        providing a machine data reader;
>        extracting data relating to an individual from an identification card via the machine data reader;
>        determining age-related information of an individual identified by the identification card based at least in part upon the extracted data;

generating a string that is received by a
point-of-sale system, the string identifying at least
one of an age and range of ages of the individual;
and
indexing the received data string in a lookup
table resident on the point-of-sale system.

## THE REJECTIONS

The Examiner relies upon the following as evidence of

unpatentability:

| Rogers | US 2003/0178487 A1 | Sep. 25, 2003 |
| Carr | US 2004/0049401 A1 | Mar. 11, 2004 |

The following rejections are before us for review.

1. The Examiner rejected claims 1-34 under 35 U.S.C. § 102(e) as
being anticipated by Carr.

2. The Examiner rejected claims 1-34 under 35 U.S.C. § 102(e) as
being anticipated by Rogers.

## ISSUES

Have the Appellants shown that the Examiner erred in rejecting

claims 1-34 under 35 U.S.C. § 102(b) as anticipated by Carr on the grounds

that the point-of-sale (POS) device and associated web cam in Carr are a

system and that the image data extracted from encoded birth date data on a

drivers license transferred between the web cam and the POS device is a

string which contains information identifying an age of the license holder?

Have the Appellants shown that the Examiner erred in rejecting

claims 1-34 under 35 U.S.C. § 102(b) as anticipated by Rogers on the

grounds that Rogers discloses indexing a received data string in a lookup table resident on the point-of-sale (POS) system?

## FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Appellants' Specification does not specifically define the term system, nor does it utilize the term contrary to its customary meaning.

2. *Merriam's Webster's Collegiate Dictionary* (10th Ed.) defines system, inter alia, as: 1: a regularly interacting or interdependent group of items forming a unified whole as ...(d) a group of devices or artificial objects or organizations forming a network esp. for distributing something or serving a common purpose... .

3. Carr discloses using a driver's license

> [f]or example, at check-in or at boarding, a
> passenger may offer a driver's license as a form of
> identification. An agent can swipe, scan, or
> otherwise process the card with a terminal unit, to
> obtain machine-readable data (e.g., steganographic
> watermark, bar code, mag stripe, RFID, etc.) from
> the card. This data can then be passed to the
> corresponding state DMV and used to authenticate
> the passenger.

(Carr, ¶[0043]).

4. Carr discloses the data derived from a driver's license

> is parsed at the airport terminal device to
> determine the issuing authority (e.g., state of
> California). The device can determine an
> electronic address for that authority (e.g., by
> reference to a local or remote database) and then

electronically forward some or all of the machine-
read data to the corresponding official data
repository (e.g., the California Department of
Motor Vehicles). A data server at that facility can
check that a driver's license having the machine-
read data has been issued by the state, and confirm
same to the airport agent. This can be done by a
simple OK/Bad message relayed from the state
DMV and displayed to the airport agent. Or the
state DMV may return a record that includes
additional data (e.g., some or all of name, address,
birthdate, eye color, hair color, social security
number, telephone number, etc.), some or all of
which data can be displayed or otherwise
communicated to the airport agent. In still other
arrangements, the data server may also transmit
back to the airport agent a data file containing the
photograph that was printed on the originally-
issued driver's license, for checking against the
photo on the presented driver's license.

(Carr, ¶[0044]).

5. Carr also discloses that a driver's license can be verified by the
technique described *supra* (FF 2) so as to be

used in retail establishments for performing age
authentication, e.g., in connection with liquor and
cigarette sales (at restaurants, bars, convenience
stores, etc.), car rentals, access to adult content,
etc. As is conventional, the purchaser presents a
driver's license to demonstrate age. However,
instead of relying on a cursory glance by the clerk,
the card can be verified using techniques like those
disclosed above and below. For example, the
customer can show the card to a web-cam
associated with a point-of-sale terminal. The web-
cam captures optically-encoded data, and the
terminal decodes same. If the birthdate is optically

> encoded on the license, it can be simply displayed
> to the clerk (or the presenter's current age, as
> calculated from that birthdate). If another
> identifier is encoded, it can be transmitted to the
> corresponding DMV server, which can return a
> message indicating whether the license belongs to
> someone above or below a specified age, or
> returning a picture of the licensed person. Inage
> data from the web-cam (still or video) can be
> stored--either at the retail establishment or
> elsewhere (e.g., DMV office) as part of a
> transaction record.

(Carr, ¶[[0059]).

## PRINCIPLES OF LAW

*Claim Construction*

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily).

Although a patent applicant is entitled to be his or her own lexicographer of patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such definitions in the specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise

notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the specific terms used to describe the invention, this must be done with reasonable clarity, deliberateness, and precision; where an inventor chooses to give terms uncommon meanings, the inventor must set out any uncommon definition in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change).

### Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

## ANALYSIS

The rejection based on Carr is affirmed as to claims 1-34. Appellants do not provide a substantive argument as to the separate patentability of claims 4-17, 19-27, and 29-34. Therefore claims 4-17, 19-27, and 29-34 fall with claims 1, 18, and 28. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2007).

Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

### Rejections based on Carr

Appellants argue that

> the capturing of the data and decoding of the data [in Carr] are performed in disparate systems - the decoding specifically performed at the point-of-

> sale system.
>
> On the contrary, the subject matter as claimed in
> independent claim 1 recites a single device - the
> machine data reader and the components housed
> therein - as performing the data reading and
> decoding. Thus, the decoding does not need to be
> performed at the point-of-sale system as described
> in Carr *et al.*"

(Appeal Br. 4-5).

We do not agree with Appellants because Appellants' arguments
"…are not based on limitations not appearing in the claims … ," and are not
commensurate with the broader scope of claim 1 which merely recites a
system and nowhere limits the machine data reader to a single device, one
and the same with a POS device. *In re Self*, 671 F.2d 1344, 1348 (CCPA
1982). A system is defined customarily as a group of devices which form a
network especially for distributing something or serving a common purpose
(FF 2). In Carr, the web cam and the POS device constitute components of a
system because the two act in concert to generate a data string which is
compatible with the POS device, and thus meets the requirement of the
claims. More specifically, the web cam is disclosed as "associated with a
point-of-sale terminal" (FF 5) and the two devices serve the common
purpose of taking the machine readable data and generating a data string
such that the "…web-cam captures optically-encoded data, and the terminal
decodes same." (FF 5.) In light of the breadth of the claim, the Appellants'
argument is not persuasive as to error in the rejection.

> Appellants separately argue claim 2 stating that
>
> claim 2 recites *the data string is substantially
> similar to a string generated by a barcode scanner
> upon reading a barcode.* This aspect is not taught

> by Cart, *et al.* especially since the data generated
> by the device is a picture; hardly what is generated
> by a barcode scanner upon reading a barcode.

(Appeal Br. 5).

We disagree with Appellants because Carr specifically discloses
scanning of machine readable data from the license in the form of bar codes
(FF 3) and the data string decoded from the scanned bar code by definition
would have to be substantially similar to that of a bar code. For these
reasons the rejection of claim 2 under 35 U.S.C. § 102(b) by Carr is
sustained.

Appellants also separately argue claim 3 stating that in Carr, "… *the
machine data reader comprising a component to identify items for sale
within the point-of-sale system* as recited in claim 3 is not disclosed in Carr,
*et al.* The web-cam device merely takes a picture of the consumer's license"
(Br. 5). However, as found *supra* (FF 5), the system in Carr includes as
components, the web cam and the associated POS device, and thus we read
the POS device (which identifies items for sale) as a component with the
web cam by virtue of the two devices working in concert as a system. For
these reasons the rejection of claim 3 under 35 U.S.C. § 102(b) by Carr is
sustained.

Appellants argue claims 18 and 28 separately. Appellants maintain
that Carr fails to disclose the limitation of "generating a string that is
received by a point-of-sale system, the string identifying at least one of an
age and range of ages of the individual." (Appeal Br. 6.) Appellants reason
that its "…string is a primitive type that is simply-deciphered and space-
efficient, whereas the picture [string of Carr] is a large collection of pixels

requiring advanced processing to display, much less discern text from it."
(*Id.*) We do not agree with the Appellants arguments because Carr discloses
that the birth date can be optically encoded on the license (FF 5). Thus, the
data which is transferred from the web cam represents a string identifying
the age of the individual. The image data transferred from the web cam to
the POS device in Carr is in our view a string of bits containing data
representing a birth date as required by the claims. In light of the breadth of
the claims, the Appellants' argument is not persuasive as to error in these
rejections of claims 18 and 28.

> *Rejections Based on Rogers*

Appellants argue, *inter alia*, that Rogers fails to disclose "...the
point of sale machine indexing the data string to a look up table." The
Examiner does not provide a referenced section in Rogers to support the
disclosure of this feature nor challenge this argument. Thus, we conclude
that Appellants' argument is persuasive as to error in the rejection of claims
1-34 under 35 U.S.C. § 102(b) based on Rogers.

## CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred
in rejecting claims 1-34 under 35 U.S.C. § 102(b) as anticipated by Carr on
the grounds that the image POS device and associated web cam in Carr are a
system and that the image data extracted from encoded birth date data on a
drivers license transferred between the web cam and the POS device is a
string which contains information identifying an age of the license holder.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-34 under 35 U.S.C. § 102(b) as anticipated by Rogers on the grounds that Rogers discloses indexing a received data string in a lookup table resident on the point-of-sale system.

## DECISION

The decision of the Examiner to reject claims 1-34 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

## AFFIRMED

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